



MAR 26 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

J Philip Polster
POLSTER, LIEDER, WOODRUFF
& LUCCHESI, L.C.
736 South New Ballas Road
St. Louis, MO 63141

In re Application of
Allen W. THORPE et al
Application No.: 09/463,001
PCT No.: PCT/US98/14775
Int. Filing Date: 16 July 1998
Priority Date: 17 July 1997
Attorney's Docket No.: 7387
For: THERMAL PROTECTIVE STRUCTURES
AND METHODS OF MAKING THEM

DECISION

ON PETITION

UNDER 37 CFR 1.47(a)

This decision is in response to applicant's "REQUEST TO CONSIDER RESPONSE TO DECISION ON PETITION AS TIMELY FILED ON NOVEMBER 16, 2001" filed on 15 January 2002 that seeks the acceptance of the application without the signature of the inventor Malkit S. Deogon.

BACKGROUND

On a decision dated 17 May 2001, this office dismissed applicant's 37 CFR 1.47(a) petition filed on 30 November 2000. The decision stated that record did not support the premise that Dr. Deogon's conduct constituted a refusal because no evidentiary documents had been submitted to show that a *bona fide* attempt was made and that Mr. Deogon refused to sign the required papers. In addition, regarding item (4) of 37 CFR 1.47(a), Allen Thorpe, and Edward W. Taylor, Jr. had not signed the declaration on behalf of Mr. Deogon.

On 16 November 2001, applicant filed the present renewed petition under 37 CFR 1.47(a). Filed with the renewed petition were, inter alia: (1) a statement of facts in support of filing on behalf of nonsigning inventor, (2) three letters from J. Philip Polster to Malkit S. Deogon and (3) an extension of time for four months.

However, according to applicants' representative, Mr. Polster, due to the anthrax letters following September 11, 2001 and the postal interruption for zip code 20231, applicants' response was irradiated. Because of the irradiation of the label, the address was no longer visible and the envelope was returned to the sender. Mr. Polster indicates that applicants' original submission contains a proper certificate of mailing under 37 CFR § 1.8(a).

DISCUSSION

The present renewed petition is considered timely because applicants' representative has provided: 1) the previously mailed reply showing the original certificate of mailing with a date of 16 November 2001 within the period of reply; and 2) a statement the reply was previously mailed to the USPTO on the date indicated on the certificate of mailing, and that it was returned as undeliverable because it was damaged in the mail.

With respect to the petition, the application together with supplemental renewed petitions under 37 CFR 1.47(a) have been reviewed and have been found to be in compliance with 37 CFR 1.47(a). The renewed petition states, letter from Mr. Polster to Dr. Deogon on July 25, 2000, that an enclosed copy of the PCT application, together with a declaration was mailed to Dr. Deogon for his review and signature. In a declaration from Mr. Feldman, Dr. Deogon called him on November of 2000 and indicated that he would probably sign the declaration. However, in later talks with Dr. Deogon, he has not given any indication that he intends to sign the declaration, and Mr. Feldman believes that Dr. Deogon refuses to sign the declaration. This evidence is sufficient to establish that the Dr. Deogon has refused to sign the declaration.

In addition, item (4) has been satisfied because Allen Thorpe, Edward W. Taylor, Jr., and Rubin Feldman have all signed the declaration on behalf of Mr. Deogon. This declaration was the supplement to the renewed petition submitted on 05 December 2001.

DECISION

The petition under 37 CFR 1.47(a) is GRANTED.


A review of the application reveals that the requirements under 35 U.S.C. 371 for entry into the national stage in the US have been satisfied.


The Application Division and the International Division are authorized to accept the application as a 37 CFR 1.47(a) application and to mail a filing receipt.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing under 35 U.S.C. 371. The 35 USC 371 date of this application is **05 December 2001**.


Rafael Bacares
PCT Legal Examiner
PCT Legal Office


Leonard Smith
PCT Legal Examiner
PCT Legal Office

Telephone: (703) 308-6312
Facsimile: (703) 308-6459